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Serbia and Montenegro: Whether there are penalties, including imprisonment, for the refusal of witnesses to testify against members of organized crime in Serbia (January 2003 - October 2005)
Research Directorate, Immigration and Refugee Board, Ottawa

In 3 October 2005 correspondence with the Research Directorate, a legal advisor at the Helsinki Committee for Human Rights in Serbia (HCHRS) provided the information that follows:

Article 100 of the Law on Criminal Procedure stipulates that witnesses are not obliged to answer any questions if doing so could bring "public shame, severe material damage or criminal prosecution" to themselves or a member of their family. Article 108 of the same law states that the court can fine a witness who does not wish to testify or to answer any questions without a reasonable excuse (those outlined in Article 100 above) in the amount of 100,000 Serbian dinars [or approximately CAN\$1,646 (Bloomberg.com 5 Oct. 2005)]. Further refusal by the witness to answer these questions will result in the imposition of another 100,000 dinar fine. According to the legal advisor, however, witnesses cannot be imprisoned for their refusal to testify in court. In addition, on 29 September 2005, the Serbian Parliament adopted a new law entitled the Law on Protection of Participants in Criminal Procedures, which provides various protection measures, including identity changes, for witnesses.

In its annual report on Serbia and Montenegro, the International Helsinki Federation for Human Rights (IHF) cited amendments to Articles 108, 115, 173, 218, 263, 299, 305 and 307 of the Act on Criminal Proceedings as providing for, among other measures, "severe" punishment for contempt of witnesses (2005, 6)). In addition, Human Rights Watch (HRW) provides corroboration that a new draft for the protection of witnesses in criminal trials by November 2004 had yet to be enacted (HRW 2005). In October 2004, HRW reported that Serbia's witness protection program did not provide for the changing of identities or residence and that the government lacked the resources necessary to provide protection for the family members of witnesses. HRW further mentioned that "[e]ven in trials not related to war crimes, the lack of witness protection often causes witnesses to alter their testimony at trial" (Oct. 2004).

Several other sources also noted that witness protection programs were often inadequate in Serbia (AI 2004; *Country Reports 2004* 28 Feb. 2005, Sec. 1; HRW 2005; *ibid.* 2004; IHF 2005, 17). For instance, AI noted that by the end of 2004, Serbian authorities had yet to implement measures to protect witnesses in cases involving the trafficking of women and girls (2005). IHF reported "mafia

style" assassinations (or assassination attempts) on certain "key witnesses in major cases of ethnically and politically motivated crimes" (2005, 16). In its 2004 report, Amnesty International (AI) also reported the 2003 intimidation and/or murder of witnesses of war crimes. The following year, an eyewitness to the assassination of Serbian Prime Minister Zoran Đindić was himself murdered (AI 2005). Finally, *Country Reports 2004* cited "attacks on and threats against witnesses and potential witnesses in domestic prosecutions" (28 Feb. 2005, Sec. 1).

According to uncorroborated information from the American Bar Association (ABA), prosecutors for organized crime cases in Serbia use "'witness collaborators,' or cooperating witnesses with full immunity," but by October 2005 they had yet to permit plea-bargaining (October 2005).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Additional Sources Consulted

Internet Sites, including: The Center for Public Integrity, *Le Courrier des Balkans*, Crime and Society, European Country of Origin Information Network (ECOI), Freedom House, The Institute for War and Peace Reporting (IWPR), Interpol, Legislationline, Overseas Security Advisory Council (OSAC), Radio Free Europe/Radio Liberty (RFE/RL), Transparency International, United Nations High Commissioner for Refugees Refworld 2004, World News Connection (WNC).

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